

# Legal Representation for Elected Council Members and Employees Policy

## City Policy

### Responsible Directorate: Office of the CEO

**Objective:** To set out guidelines to assist Council in determining when it is appropriate to pay legal representation costs.

#### 1. Application:

This Policy does not apply to legal representation obtained by the City in relation to the day-to-day management of the City's affairs.

#### 2. Definitions:

**"approved lawyer"** means:

- a. ~~a 'certified practitioner'~~ an Australian lawyer as defined under the *Legal Practice Profession Uniform Law Application Act 2003* 2022; ~~or~~ and
- b. from a law firm on the City's WALGA panel of legal service providers, ~~if relevant~~, unless the Council considers that this is not appropriate – for example, where there is or may be a conflict of interest or insufficient expertise; and
- c. who is approved in writing by the Council or the CEO acting under delegated authority.

**"Elected Council Member"** or **"Employee"** ~~"Counterparty"~~ means a current or former ~~Commissioner~~ Commissioner, Elected Council Member, non-elected members of a Council Committee or Employee of the City.

**"legal proceedings"** may be civil, criminal or investigative (including the conduct of an inquiry). ~~under any written law~~.

**"legal representation"** means the provision of legal services, to or on behalf of ~~an Elected a~~ Council Member or Employee, by an approved lawyer ~~that are of legal services~~ in respect of:

- a. ~~a matter or matters arising from the performance of the functions of the Council Member or Employee; and~~
- b. ~~legal proceedings involving the Council Member or Employee that have been, or may be, commenced.~~

- a. ~~a direct payment to the Approved Lawyer (or the relevant law firm); or~~
- b. ~~b. a reimbursement to the Elected Member or Employee.~~

### 3. Statement:

Under the *Local Government Act 1995*, the general function of a local government is to provide for the good government of the persons in its district. Money held by the local government may be applied towards the performance of this function including the expenditure of funds to provide legal representation for **Elected Council** Members and Employees, as long as the local government believes on reasonable grounds that the expenditure falls within the scope of the general function.

This policy provides for criteria and circumstances for assessing the appropriateness of expending City funds on the legal representation of **Elected Council** Members and Employees.

### 4. Details:

#### 4.1 Payment Criteria:

There are ~~three~~ four major criteria for determining whether the City will pay the legal representation costs of ~~an Elected a Council~~ Member or Employee. These are:

- a. The legal representation costs must relate to a matter that arises from the performance, by the **Elected Council** Member or Employee, of his or her functions.
- b. The legal representation costs must be in respect of legal proceedings that have been, or may be, commenced.
- c. In performing the functions, to which the legal representation relates, the **Elected Council** Member or Employee must have acted in good faith, and must not have acted unlawfully or in a way that constitutes improper conduct.
- d. The legal representation costs do not relate to a matter that is of a personal or private nature.

#### 4.2 Examples of Legal Representation Costs That May be Approved:

4.2.1 If the criteria in clause 4.1 are satisfied, the City may approve legal representation costs:

- a. where proceedings are brought against ~~an Elected a Council~~ Member or Employee in connection with his or her functions – for example, an action for defamation or negligence arising out of a decision made or action taken by the **Elected Council** Member or Employee; or
- b. for involvement in a statutory or other inquiry that requires information to be given, or to which information is given, by a **Elected Council** Member or Employee in connection with his or her functions; or
- c. to enable proceedings to be commenced and/or maintained by **Elected a Council** Member or Employee to permit them to carry out their functions – for example where ~~an Elected a Council~~ Member or Employee seeks to take action

to obtain a restraining order against a person using threatening behaviour to the ~~Elected Council~~ Member or Employee; or

- d. where exceptional circumstances are involved – for example, where a person or organisation is lessening the confidence of the community in the local government by publicly making adverse personal comments about ~~Elected Council~~ Members or Employees.

4.2.2 The City will not approve the payment of legal representation costs to ~~an Elected a Council~~ Member or Employee for a defamation action, or a negligence action, instituted by the ~~Elected Council~~ Member or Employee.

### **4.3 Application for Payment:**

4.3.1. ~~An Elected A~~ Council Member or Employee who seeks assistance under this Policy is to make an application(s) for payment of legal representation costs.

4.3.2. The application:

- a. is to be made in writing to the Council;
- b. is to give details of:
  - i. the matter for which legal representation is sought;
  - ii. how the matter relates to the functions of the ~~Elected Council~~ Member or Employee;
  - iii. the lawyer (or law firm) who is to be asked to provide the legal representation;
  - iv. the nature of legal representation to be sought (such as advice, representation in court, preparation of a document. etc);
  - v. the estimated cost of the legal representation (if known); and
  - vi. why it is in the interests of the City for payment to be made.
- c. is to contain a declaration by the applicant that he or she has acted in good faith and has not acted unlawfully or in a way that constitutes improper conduct in relation to the matter to which the application relates;
- d. so far as possible, is to be made before seeking the legal representation to which the application relates.

4.3.3. The application is to be accompanied by a written statement by the applicant that he or she:

- a. has read and understands the terms of this Policy;
- b. acknowledges that any approval of legal representation costs is conditional on the repayment provisions of clause 4.7 and any other conditions to which the approval is subject; and

- c. undertakes to repay to the City any legal representation costs in accordance with the provisions of clause 4.7.
- 4.3.4. In relation to clause 4.3.3.c, when a person is to be in receipt of such monies the person should sign a document which requires repayment of that money to the local government as may be required by the local government and the terms of the Policy.
- 4.3.5. An application is to be accompanied by a report prepared by or on behalf of the CEO or, where the CEO is the applicant, by the Director **Governance and Strategy Corporate Services**.

#### **4.4 Legal Representation Costs - Limit:**

- 4.4.1. Unless otherwise determined by Council, payment of legal representation costs in respect of a particular application is not to exceed \$6,000.
- 4.4.2. ~~An-Elected~~ **A Council** Member or Employee may make a further application in respect of the same matter.

#### **4.5 Council's Powers:**

- 4.5.1. Council may:
  - a. refuse;
  - b. grant; or
  - c. grant subject to conditions,
 an application for payment of legal representation costs.
- 4.5.2. A condition under clause 4.5.1 may include a financial limit and/or a requirement to enter into a formal agreement, including a security agreement, relating to the payment, and repayment, of legal representation costs.
- 4.5.3. In assessing an application, regard may be had to any insurance benefits that may be available to the applicant under the City's existing insurance policy.
- 4.5.4. Council may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.
- 4.5.5. Council may, subject to clause 4.5.6, determine that ~~an-Elected~~ **a Council** Member or Employee whose application for legal representation costs has been approved:
  - a. has, in respect of the matter for which approval was given, not acted in good faith, or has acted unlawfully or in a way that constitutes improper conduct; or
  - b. has given false or misleading information in respect of the application.
- 4.5.6. A determination under clause 4.5.5 may be made by Council only on the basis of, and consistent with, the findings of a court, tribunal or inquiry.
- 4.5.7. Where Council makes a determination under clause 4.5.5, it may also determine that all or part of the legal representation costs paid by the City, are to be repaid by the ~~Elected~~ **Council** Member or Employee in accordance with clause 4.7

#### 4.6 CEO Authorisation:

- 4.6.1. In cases of urgency, the CEO, subject to clause 4.6.2, may exercise, on behalf of the Council, any of the powers of the Council under clause 4.5, to a limit of \$6,000, where a delay in approving an application would be detrimental to the legal rights of ~~an Elected~~ a Council Member or Employee.
- 4.6.2. Where the CEO is the applicant, the powers in clause 4.6.1 are to be exercised by the Director ~~Governance and Strategy Corporate Services~~.
- 4.6.3. An application approved by the CEO under clause 4.6.1, or by the Director ~~Governance and Strategy Corporate Services~~ under clause 4.6.2, is to be submitted to the next meeting of Council which may exercise any of its powers under this Policy.

#### 4.7 Repayment of Legal Representation Costs:

- 4.7.1. ~~An-Elected~~ A Council Member or Employee, whose legal representation costs have been paid by the City, is to repay the City:
  - a. all or part of those costs – in accordance with a determination by Council under clause 4.5.5; or
  - b. as much of those costs as are available to be paid by way of off-set – where the Council Member or Employee receives monies paid for costs, damages, or settlement, in respect of the matter for which the City paid the legal representation costs.
- 4.7.2. The City may take action in a court of competent jurisdiction to recover any monies due to it under this Policy.

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**Creation Date:** June 1999 (CJ2013-06/99)

**Amendments:** CJ001-02/01, CJ136-06/04, CJ199-09/08, CJ128-07/14, CJ##-##/##

**Related Documentation:** *Local Government Operational Guidelines ~~No. 14~~ – Legal Representation for Council Members and Employees – Department of Local Government, ~~Sport and Cultural Industries 2006~~*